

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

RYAN, LLC,

Plaintiff,

v.

FEDERAL TRADE COMMISSION,

Defendant.

Civil Action No. 3:24-cv-986-E

**RYAN, LLC'S OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

This Court should deny the Federal Trade Commission's motion for summary judgment. ECF 184. Each of the matters required by Local Rule 56.4 are set forth in Ryan, LLC's accompanying consolidated reply brief in support of its motion for summary judgment and in opposition to Defendant Federal Trade Commission's motion for summary judgment.

As more fully explained in the accompanying brief and Ryan's brief in support of its summary judgment motion, ECF 167, Ryan is entitled to judgment as a matter of law on its claims that the Non-Compete Rule violates the Administrative Procedure Act because (1) the Commission lacked statutory authority to promulgate the Non-Compete Rule; (2) if Congress did grant such authority, it did so in violation of the non-delegation doctrine; (3) the Rule is unlawfully retroactive; (4) the Commission's reasons for adopting the Rule are arbitrary and capricious; and (5) the Commission is unconstitutionally insulated from presidential control. Ryan is also

entitled to judgment on its identical claims under the Declaratory Judgment Act. This Court therefore should grant Ryan's motion for summary judgment, deny the Commission's motion for summary judgment, and enter judgment for Ryan. As explained in the accompanying brief and Ryan's brief in support of its summary judgment motion, the proper remedy is vacatur of the Non-Compete Rule on a nationwide basis.

Respectfully submitted,

Dated: August 9, 2024

/s/ Allyson N. Ho

Allyson N. Ho
Texas Bar No. 24033667
Elizabeth A. Kiernan
Texas Bar No. 24105666
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
Telephone: 214.698.3100
Facsimile: 214.571.2900
aho@gibsondunn.com
ekiernan@gibsondunn.com

Charles W. Fillmore
Texas Bar No. 00785861
H. Dustin Fillmore III
Texas Bar No. 06996010
THE FILLMORE LAW FIRM LLP
201 Main Street, Suite 700
Fort Worth, TX 76102
Telephone: 817.332.2351
chad@fillmorefirm.com
dusty@fillmorefirm.com

Eugene Scalia (*pro hac vice*)
Amir C. Tayrani (*pro hac vice*)
Andrew G. I. Kilberg (*pro hac vice*)
Aaron Hauptman (*pro hac vice*)
Joshua R. Zuckerman (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539
escalia@gibsondunn.com
atayrani@gibsondunn.com
akilberg@gibsondunn.com
ahaupertman@gibsondunn.com
jzuckerman@gibsondunn.com

Attorneys for Ryan, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2024, I electronically transmitted the attached document to the Clerk of the Court and all counsel of record using the ECF System for filing and service in accordance with Local Rule 5.1.

/s/ Allyson N. Ho
Allyson N. Ho